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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/072,531
Filing Date: February 08, 2002
Appellant(s): GAGE, KEVIN

Michael I. Rackman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/07/2009 appealing from the Office action mailed 4/1/2008.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal, is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

The statement of the status of the Amendment contained in the brief is correct.

(5) *Summary of claimed subject matter*

The summary of the claimed subject matter is contained in the brief is correct.

(6) *Grounds of Rejection to be reviewed on appeal*

The following ground(s) of rejection are applicable to the appealed claims:

- (i) Claims 1, 6, 7, 11, 14, 15, 28, 33, 34, 17, 18, 25-27, 29-31, 35, 36 and 38 are rejected under 35 U.S.C. 102(e) as being anticipated by Martin et al (U.S. 7,174,512 B2).
- (ii) Claims 16, 32 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al (U.S. 7,174,512 B2) and Inoue et al (U.S. 6,580,462 B2).

This rejection is set forth in a prior office action, mailed on April 1, 2008.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

U.S. 7,174,512 B2	Martin et al.	02-2007
U.S. 6,580,462 B2	Inoue et al	06-2003

(9) Grounds of Rejection

Examiner notes that claims 11, 25, 26 & 28 were amended on July 25, 2008 after the final office action dated April 1, 2008.

Only for clarification purposes and in light of the amendments after final office action, examiner has further revised the Final office action below that was given on April 1, 2008 without changing any prior art or grounds of rejection that were previously cited.

Examiner has corrected the typographical error for claim group 11, 14, 15, 28, 33 & 34 that were originally indicated as being rejected by Martin and claim rejections formulated in accordance with 35 U.S.C 102(e) to pertinent excerpts in Martin et al but in the actual claim examiner mistakenly put Inoue-Kostreski instead to Martin alone.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 6, 7, 17, 18, 25-27, 29-31, 35, 36 and 38 rejected under 35 U.S.C. 102

(e) as being anticipated by Martin et al (U.S. 7,174,512 B2).

3. As per claims 1 & 17 Martin disclosed an apparatus for processing multimedia programs that are not playable on a digital audio player, said programs being composed of composite signals including an audio program component and a video component comprising: an input port used to receive a composite signal; an extractor coupled to said input port and adapted to selectively extract said audio component from said composite signal without extracting said video signal (col.7, lines 56-67 & col.8, line.1); a processor that processes said audio component to generate a processed audio signal in a format that can be received and played by the digital audio player; and an output port for outputting said processed audio signal (col.5, lines 32-67 & col.6, lines 1-6).

4. As per claim 6 Martin disclosed the apparatus of claim 1 wherein said audio component includes a multichannel audio signal and wherein said processed signal includes a stereo signal (col.6, lines 7-24).

5. As per claims 7, 26, 27, 35 & 36 Martin disclosed the apparatus of claim 6 wherein said processor includes a folder circuit adapted to fold said multichannel audio signal to generate said stereo audio signal (col.6, lines 7-24).

6. As per claim 18 Martin disclosed the method of claim 17 wherein said multimedia program is received electronically from a distribution network, further comprising storing said multimedia program (col.5, lines 32-67).

7. As per claim 25 Martin disclosed the method of claim 17 wherein said multimedia program is compressed format and said second processed audio signal is an uncompressed format (col.5, lines 32-67 & col.6, lines 1-6).

1. As per claim 29 Martin disclosed the apparatus of claim 1 wherein said input port is adapted to receive a broadband multimedia program (col.5, lines 32-67).

2. As per claim 30 Martin disclosed the apparatus of claim 1 wherein said input port includes a media reader (col.5, lines 32-67).

3. As per claim 31 Martin disclosed the apparatus of claim 3 wherein said input port includes a DVD reader (col.19, lines 40-45).
4. As per claim 38 Martin disclosed the method of claim 17 further comprising saving said processed output signal before it is output to said digital audio device (col.3, lines 19-44).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 11, 14, 15, 28, 33 & 34 rejected under 35 U.S.C. 102(e) as being anticipated by Martin et al (U.S. 7,174,512 B2).
7. As per claims 11 & 28 Martin disclosed an apparatus for generating an audio output in a format that can be played by a digital audio player from composite signals that are incompatible with the audio player, said apparatus comprising: a broadband input port adapted to receive a multimedia program including a composite signal with

audio and video component; a data storage adapted to store said multimedia program; a controller adapted to receive selections from a user and to generate commands responsive to said selections (col.3, lines 45-63); an extractor responsive to said commands and adapted to receive said multimedia program and to selectively extract said audio component without extracting said video component from said multimedia program (col.17, lines 56-67 & col.8, line1); a processor processing said audio component to generate a digital audio signal in a format that is playable by the digital audio player and an output port outputting said processed audio output signal (col.7, lines 51-67 & col.8, line 1).

8. As per claims 14 & 34 Martin disclosed the apparatus of claim 11 wherein audio signal is a multichannel audio signal; and wherein said processor includes a folder circuit adapted to fold said multichannel audio signal (col.6, lines 7-24), and an encoder adapted to encode the folded audio signal using a standard compression protocol (col.10, lines 19-44).

9. As per claim 15 and 33 Martin disclosed the apparatus of claim 11 wherein said multimedia program is compressed using an MPEG protocol and wherein said extractor is adapted to use said MPEG protocol to extract said audio component. (col.5, lines 32-67 & col.6, lines 1-6).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 16, 32 & 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin (U.S. 7,174,512 b2) and Inoue et al (U.S. 6,580,462 B2).

12. As per claim 16 Martin disclosed the apparatus of claim 14. However Martin did not explicitly disclose wherein said encoder is adapted to encode said folded audio signal using an ATRAC protocol. In the same filed of endeavor Inoue disclosed wherein said encoder is adapted to encode said folded audio signal using an ATRAC protocol (col.15, lines 17-39).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated the encoder being adapted to encode and fold audio signal using ATRAC protocol as disclosed by Inoue in the disclosed apparatus of claim 14 as anticipated by Martin in order to make the apparatus have an additional capability to process an additional signal standard resulting in a more versatile processing apparatus.

13. As per claim 32 Martin disclosed the apparatus of claim 1. However Martin did not explicitly disclose wherein said processed signal is a compressed signal in one of an MPEG and an ATRAC standard. In the same filed of endeavor Inoue disclosed wherein said processed signal is a compressed signal in one of an MPEG and an ATRAC standard (col.15, lines 17-39).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated the compressed signal as ATRAC standard as disclosed by Inoue in the disclosed apparatus of claim 1 as anticipated by Martin in order to make the apparatus have an additional capability to process an additional signal standard resulting in a more versatile processing apparatus.

14. As per claim 37 Martin disclosed the apparatus of claim 36. However Martin did not explicitly disclose wherein said processed audio is compressed one of an MPEG and an ATRAC protocol. In the same filed of endeavor Inoue disclosed wherein said processed audio is compressed one of an MPEG and an ATRAC protocol (col.15, lines 17-39).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated the audio as compressed ATRAC protocol as disclosed by Inoue in the disclosed apparatus of claim 36 as anticipated by Martin in order to make the apparatus have an additional capability to process an additional signal standard resulting in a more versatile processing apparatus.

(10) Response to Arguments

With respect to claims 1, 6, 7, 11, 14-18, 25-38 appellant argued on the following limitations against the applied prior art Martin et al (U.S. 7, 174,512 B2) and Inoue et al (U.S. 6,580,462 B2).

(A) Martin does not anticipate claims 1, 6, 7, 17, 25-31, 35, 36 & 38.

Issue 1: Appellant on the first paragraph of page 9 in the appeal brief argued that fails to disclose the limitation “an extractor coupled to said input port and adapted to selectively extract said audio component from said composite signal without extracting the said video signal” & “a processor that processes said audio signal in a format that can be received and played by the digital audio player”, as claimed in claim 1.

As to appellant’s argument examiner would first like to point out Board’s attention to the cited (Col.7, lines 51-67 & col.8, line 1) of Martin et al (U.S. 7,174, 512), shown below.

STB 1140 also includes a tuner 242 and demodulator 244 (e.g., a 256 QAM demodulator) to receive and demodulate the received transmissions which are then filtered and demultiplexed by unit 240. It will be appreciated that tuner 242 could in fact be multiple MPEG tuners. 55

Central processor 220 may, for example, be a microprocessor running at 50 MHz or more. The memory of STB 1140 may include EEPROM, host RAM, flash memory for software and data, MPEG RAM and graphics RAM. Central processor 220 generally handles the processing of data 60 within STB 1140. In the case of received audio and video signals, the MPEG packets containing these signals are demultiplexed and filtered so as to pass real time audio and video data in the form of a packetized elementary stream (PES) of audio and visual data to dedicated audio and video 65 processors (decoders) 246, 248. The converted output from audio processor 246 passes to a preamplifier 250 and there-

after to an audio output of STB 1140. The converted output

In the above excerpt Martin clearly disclose STB receiving transmission of a signal containing both Audio and Video signals. Martin further states that the Audio signals are filtered (I.E extracted) from the video signals and processed separately via dedicated audio processors (decoders). Martin further states that the converted output from the audio processor passes to a preamplifier 250 and thereafter to an audio output of STB 1140. Hence Martin clearly disclosed the extraction and independent processing of an "Audio signal" from received transmission of "audio and video signal" and passing of the processed audio signal to be played at an audio output (I.E Audio player).

Issue 2: Appellant on the second paragraph of Page 9 again argued that Martin fails to disclose “a processor that processes said audio signal in a format that can be received and played by the digital audio player”.

As to appellant's argument in the explanation above Martin clearly disclosed a processor that processes said audio signal in a format that can be received and played by the digital audio player. Martin et al (U.S. 7,174, 512) discloses this limitation on (col.7, lines 51-67 & col.8, line 1) shown below.

STB 1140 also includes a tuner 242 and demodulator 244 (e.g., a 256 QAM demodulator) to receive and demodulate the received transmissions which are then filtered and demultiplexed by unit 240. It will be appreciated that tuner 242 could in fact be multiple MPEG tuners. 55

Central processor 220 may, for example, be a microprocessor running at 50 MHz or more. The memory of STB 1140 may include EEPROM, host RAM, flash memory for software and data, MPEG RAM and graphics RAM. Central processor 220 generally handles the processing of data 60 within STB 1140. In the case of received audio and video signals, the MPEG packets containing these signals are demultiplexed and filtered so as to pass real time audio and video data in the form of a packetized elementary stream (PES) of audio and visual data to dedicated audio and video 65 processors (decoders) 246, 248. The converted output from audio processor 246 passes to a preamplifier 250 and there-

after to an audio output of STB 1140. The converted output

In the above excerpt Martin clearly disclose STB receiving transmission of a signal containing both Audio and Video signals. Martin further states that the **Audio signals are filtered (I.E extracted) from the video signals and processed separately** via

dedicated audio processors (decoders). Martin further states that the converted output from the audio processor passes to a preamplifier 250 and thereafter to an audio output of STB 1140. Hence Martin clearly disclosed the extraction and independent processing of an "Audio signal" from received transmission of "audio and video signal" and passing of the processed audio signal to be played at an audio output (I.E Audio player).

Issue 3: Appellant on the second last paragraph of page 10 argued that Marin fails to disclose a processor that takes the audio signal and converts it into a signal suitable for playing by a digital audio player.

As to appellant's argument examiner Martin (U.S. 7,174, 512) clearly disclosed this limitation in (Col.7, lines 51-67 & col.8, line 1), shown below.

STB 1140 also includes a tuner 242 and demodulator 244 (e.g., a 256 QAM demodulator) to receive and demodulate the received transmissions which are then filtered and demultiplexed by unit 240. It will be appreciated that tuner 242 could in fact be multiple MPEG tuners. 55

Central processor 220 may, for example, be a microprocessor running at 50 MHz or more. The memory of STB 1140 may include EEPROM, host RAM, flash memory for software and data, MPEG RAM and graphics RAM. Central processor 220 generally handles the processing of data 60 within STB 1140. In the case of received audio and video signals, the MPEG packets containing these signals are demultiplexed and filtered so as to pass real time audio and video data in the form of a packetized elementary stream (PES) of audio and visual data to dedicated audio and video 65 processors (decoders) 246, 248. The converted output from audio processor 246 passes to a preamplifier 250 and there-

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In the above excerpt Martin clearly disclose STB receiving transmission of a signal containing both Audio and Video signals. Martin further states that the **Audio signals are filtered (I.E extracted) from the video signals and processed separately** via dedicated audio processors (decoders). Martin further states that the converted output from the audio processor passes to a preamplifier 250 and thereafter to an audio output of STB 1140. Hence Martin clearly disclosed the extraction and independent processing of an "Audio signal" from received transmission of "audio and video signal" and passing of the processed audio signal to be played at an audio output (I.E audio player).

(B) Claims 11, 14, 15, 28, 33 and 34 are not anticipated by Inoue.

NOTE: Examiner notes that claims 11, 25, 26 & 28 were amended on July 25, 2008 after the final office action dated April 1, 2008.

Only for clarification purposes and in light of the amendments after final office action, examiner has further revised the Final office action (see above under heading (9) "Grounds of Rejection") that was given on April 1, 2008 without changing any prior art or grounds of rejection that were previously cited. Examiner has corrected the typographical error for claim group 11, 14, 15, 28, 33 & 34 that were originally indicated as being rejected by Martin (admitted by appellant at the bottom of page 11 in the appeal brief) and claim rejections formulated in accordance with 35 U.S.C 102(e) to pertinent excerpts in Martin et al (U.S. 7,174, 512) but in the actual claim citation examiner mistakenly put Inoue-Kostreski instead to Martin alone.

Appellant acknowledges on bottom of page 11 that examiner rejected claims 11, 14, 15, 28, 33 & 34 as being anticipated by Martin (U.S. 7,174, 512) however appellant assumed Inoue as being the prior art to argue these claims .

For argument's prospective examiner has treated appellant's arguments as being directed against Martin (U.S. 7,174, 512) instead of Inoue since the original rejections were made with respect to Martin et al and claim 1 is very similar to claim 11 which was also rejected with Martin (U.S. 7,174, 512).

Issue 1: Appellant on the first paragraph of page 13 of the appeal brief argued that in Martin fails to disclose the limitation "an extractor responsive to said commands and adaptive to receive said multimedia program and to selectively extract said audio component without extracting said video component from said multimedia program" as disclosed in claim 11.

As to appellant's argument Martin (U.S. 7,174, 512) as an example on col.3, lines 45-63 clearly disclosed user making use of the application (I.E user invoking commands) to listen to audio feed only. In the field of computer science an application is well known to have a set of commands which perform a certain function(s).

Using an input device (such as directional keys on a 45 remote control or on a keypad of an STB), a user can position an indicator (e.g., a cursor, a highlight, a frame, etc.) to select one of cells 104. As cells gain/lose focus, the audio output by the television speaker(s) changes and the application or program description text is changed to correspond 50 to the cell currently having focus. Pressing an "OK" or "Enter" key of the input device when the indicator is associated with a particular one of the cells launches the application underlying that cell. For example, one or more of the cells 104-1 to 104-12 may have visual objects that are the 55 live (current) video of respectively corresponding television channels. The application underlying the cells may be a tuning application that will display the television channel in a full-screen view. Other cells may be associated with applications for pay-per-view, video-on-demand, interactive 60 sports, interactive sports statistics, interactive talk shows, games, purchases, stock-ticker information, audio, and the like.

Additionally, Martin (U.S. 7,174, 512) clearly disclosed the extraction of the audio component on (Col.7, lines 51-67 & col.8, line 1), shown below.

STB 1140 also includes a tuner 242 and demodulator 244 (e.g., a 256 QAM demodulator) to receive and demodulate the received transmissions which are then filtered and demultiplexed by unit 240. It will be appreciated that tuner 242 could in fact be multiple MPEG tuners. 55

Central processor 220 may, for example, be a microprocessor running at 50 MHz or more. The memory of STB 1140 may include EEPROM, host RAM, flash memory for software and data, MPEG RAM and graphics RAM. Central processor 220 generally handles the processing of data 60 within STB 1140. In the case of received audio and video signals, the MPEG packets containing these signals are demultiplexed and filtered so as to pass real time audio and video data in the form of a packetized elementary stream (PES) of audio and visual data to dedicated audio and video 65 processors (decoders) 246, 248. The converted output from audio processor 246 passes to a preamplifier 250 and there-

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In the above excerpt Martin clearly disclose STB receiving transmission of a signal containing both Audio and Video signals. Martin further states that the Audio signals are filtered (I.E extracted) from the video signals and processed separately via dedicated audio processors (decoders). Martin further states that the converted output from the audio processor passes to a preamplifier 250 and thereafter to an audio output of STB 1140. Hence Martin clearly disclosed the extraction and independent processing of an "Audio signal" from received transmission of "audio and video signal" and passing of the processed audio signal to be played at an audio output (I.E audio player).

Issue 3: Appellant on the send last paragraph of page 14 argued with respect to dependent claim 34 that martin fails to disclose folding multichannel audio signal into a stereo audio signal.

As to appellant's argument examiner has already explained the extraction and processing of the audio from a signal containing both audio and video and sending it to an audio player. Additionally Martin also discloses processing of multichannel audio signal on col.13, lines 56-62. shown below.

For the portal of FIG. 5C, the composite video stream and all of the audio streams are carried in a single MPEG-2 program sharing a common clock reference as explained above. The audio streams are duplicated in both the full screen program and the portal interface program. This 60 allows the portal to tune to the audio of programs carried on different transport streams as further explained above.

Therefore in light of the above explanation Martin clearly discloses folding multichannel audio signal into a stereo audio signal.

(C) Claims 16, 32 and 37 are not obvious in view of Martin over Inoue.

Issue1: Appellant on the last paragraph of page 14 of the appeal brief with respect to the dependent claims 16, 32, & 37 argued that since Martin fails to disclose at least two elements as being "extractor" and "processor" in the independent claims 1 & 17 and claim 11 has the same two elements. Therefore the resulting combination of Martin and Inoue is not obvious to anticipate these dependent claims.

As to appellant's arguments, examiner has clearly explained the anticipation of all the independent claims along with "extractor" and "processor" functionalities in light of Martin's disclosure. Additionally examiner in the final office action has clearly disclosed the reasons to combine Martin and Inoue to anticipate the dependent claims 16, 32 & 37. Finally, since independent claims 1, 11 & 17 are not allowable in light of Martin's disclosure therefore their respective dependent claims are not allowable.

Finally Examiner believes that the rejection based on prior art references is proper, sustainable that clearly anticipate applicant's invention as claimed and should be affirmed.

(11) *Related proceedings appendix*

None.

Respectfully submitted,

/Asghar Bilgrami/

Examiner, Art Unit 2243

March 25, 2009

Conferees:

/Kenny S Lin/

Primary Examiner, Art Unit 2452